

401 KAR 5:080. Criteria and standards for the Kentucky Pollutant Discharge Elimination System.

RELATES TO: KRS 224.10-100, 224.10-110, 224.16-050, 224.18-760, 224.70-100, 224.70-110, 40 C.F.R. 122.21, 122.29, 125.1, 125.2, 125.3, 125.10, 125.11, 125.31, 125.32, 125.70, 125.71, 125.72, 125.73, EO 2008-507, 2008-531

STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.70-100, 224.70-110, 40 C.F.R., EO 2008-507, 2008-531

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the cabinet to issue, continue in effect, revoke, modify, suspend or deny under conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387, subject to the conditions imposed in 33 U.S.C. 1342(b) and (d) and that an exemption granted in the issuance of a KPDES permit shall be pursuant to 33 U.S.C. 1311, 1312, and 1326(a). EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environmental Cabinet. This administrative regulation establishes the criteria and standards for the KPDES permitting system.

Section 1. Definitions. Definitions established in [40 C.F.R. 122.2](#) shall apply for the interpretation of the federal regulations cited within this administrative regulation.

Section 2. Criteria and standards for technology-based treatment standards shall be as established in:

- (1) [40 C.F.R. 125.1](#), effective July 1, 2008;
- (2) [40 C.F.R. 125.2](#), effective July 1, 2008; and
- (3) [40 C.F.R. 125.3](#), effective July 1, 2008.

Section 3. Criteria for issuance of permits to aquaculture projects shall be as established in:

- (1) [40 C.F.R. 125.10](#), effective July 1, 2008; and
- (2) [40 C.F.R. 125.11](#), effective July 1, 2008.

Section 4. Criteria and standards for determining fundamentally different factors shall be as established in:

- (1) [40 C.F.R. 125.30](#), effective July 1, 2008;
- (2) [40 C.F.R. 125.31](#), effective July 1, 2008; and
- (3) [40 C.F.R. 125.32](#), effective July 1, 2008.

Section 5. Criteria for determining alternative effluent limitations for the control of a thermal component of a discharge shall be as established in:

- (1) [40 C.F.R. 125.70](#), effective July 1, 2008;
- (2) [40 C.F.R. 125.71](#), effective July 1, 2008;
- (3) [40 C.F.R. 125.72](#), effective July 1, 2008; and
- (4) [40 C.F.R. 125.73](#), effective July 1, 2008.

Section 6. Special KPDES program requirements related to new sources and new discharges shall be as established in [40 C.F.R. 122.29](#), effective July 1, 2008.

Section 7. Toxic Pollutants. References throughout 401 KAR Chapter 5 establish requirements for discharges of toxic pollutants. Subsections (1) through (66) identify those toxic pollutants that shall be considered for each of these KPDES requirements.

- (1) Acenaphthene.
- (2) Acrolein.
- (3) Acrylonitrile.
- (4) Aldrin or dieldrin.
- (5) Antimony and compounds.
- (6) Arsenic and compounds.
- (7) Asbestos.
- (8) Benzene.
- (9) Benidine.
- (10) Beryllium and compounds.
- (11) Cadmium and compounds.
- (12) Carbon tetrachloride.
- (13) Chlordane (technical mixture and metabolites).
- (14) Chlorinated benzenes (other than dichloro-benzenes).
- (15) Chlorinated ethanes (including 1,2-dichloroethane, 1,1,1-trichloroethane, and hexachloroethane).
- (16) Chloroalkyl ethers (including chloromethyl, chloroethyl, and mixed ethers).
- (17) Chlorinated naphthalene.
- (18) Chlorinated phenols (including other than those listed elsewhere; includes trichlorophenols and chlorinated cresols).
- (19) Chloroform.
- (20) 2-chlorophenol.
- (21) Chromium and compounds.
- (22) Copper and compounds.
- (23) Cyanides.
- (24) DDT and metabolites.
- (25) Dichlorobenzenes (including 1,2-, 1,3-, and 1,4- dichlorobenzenes).
- (26) Dichlorobenzidine.
- (27) Dichloroethylenes (including 1,1- and 1,2-dichloroethylene).
- (28) 2,4-dichlorophenol.
- (29) Dichloropropane and dichloropropene.
- (30) 2,4-dimethylphenol.
- (31) Dinitrotoluene.
- (32) Diphenylhydrazine.
- (33) Endosulfan and metabolites.
- (34) Endrin and metabolites.
- (35) Ethylbenzene.
- (36) Fluoranthene.
- (37) Haloethers (other than those listed elsewhere; including chlorophenylphenyl ether, bromophenylphenyl ether, bis(dichloroisopropyl) ether, bis(chloroethoxy) methane, and polychlorinated diphenyl ethers).
- (38) Halomethanes (other than those listed elsewhere; including methylene chloride methylchloride, methyl-bromide, bromoform, dichlorobromomethane, trichlorofluoromethane, and di-chlorodifluoromethane).
- (39) Heptachlor and metabolites.
- (40) Hexachlorobutadiene.
- (41) Hexachlorocyclohexane (all isomers).
- (42) Hexachlorocyclopentadiene.
- (43) Isophorone.
- (44) Lead and compounds.
- (45) Mercury and compounds.

- (46) Naphthalene.
- (47) Nickel and compounds.
- (48) Nitrobenzene.
- (49) Nitrophenols (including 2,4-dinitrophenol and dinitrocresol).
- (50) Nitrosamines.
- (51) Pentachlorophenol.
- (52) Phenol.
- (53) Phthalate esters.
- (54) Polychlorinated biphenyls (PCBs).
- (55) Polynuclear aromatic hydrocarbons (including benzantracenes, benzopyrenes, benzofluoranthene, chrysenes, dibenzanthracenes, and indenopyrenes).
- (56) Selenium and compounds.
- (57) Silver and compounds.
- (58) 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD).
- (59) Tetrachloroethylene.
- (60) Thallium and compounds.
- (61) Toluene.
- (62) Toxaphene.
- (63) Trichloroethylene.
- (64) Vinyl chloride.
- (65) Zinc and compounds.
- (66) The term "compounds" shall include organic and inorganic compounds.

Section 8. The level of effluent quality attainable through the application of secondary or equivalent treatment shall be as established in:

- (1) [40 C.F.R. 133.100](#), effective July 1, 2008;
- (2) [40 C.F.R. 133.101](#), effective July 1, 2008;
- (3) [40 C.F.R. 133.102](#), effective July 1, 2008;
- (4) [40 C.F.R. 133.103](#), effective July 1, 2008;
- (5) [40 C.F.R. 133.104](#), effective July 1, 2008; and
- (6) [40 C.F.R. 133.105](#), effective July 1, 2008.

Section 9. Modifications, Exceptions, and Additions to Cited Federal Regulations. (1) "Waters of the United States" shall be modified to "Waters of the Commonwealth" in the federal regulations cited in Sections 1 through 8 of this administrative regulation;

(2) "Director" shall be modified to "cabinet" if the authority to administer the federal regulations cited in Sections 1 through 8 of this administrative regulation has been delegated to the cabinet;

(3) "NPDES" shall be modified to "KPDES" if the authority to administer the federal regulations cited in Sections 1 through 8 of this administrative regulation has been delegated to the cabinet; and

(4) The notification requirements related to applications for a thermal variance shall be modified to add the notification of interstate agencies in [40 C.F.R. 125.72\(d\)](#), effective July 1, 2008. (9 Ky.R. 879; Am. 1141; eff. 6-1-83; 12 Ky.R. 559; eff. 12-10-85; 20 Ky.R. 3290; 21 Ky.R. 436; eff. 8-24-94; TAm eff. 8-9-2007; 35 Ky.R. 2559; 36 Ky.R. 403; eff. 9-25-2009.)